

VIA FIRST CLASS MAIL

MAY 1 1 2009

William J. McGinley Kathryn Biber Chen Patton Boggs 2550 M Street NW Washington, DC 20037

> RE: MUR 6071

Dear Mr. McGinley:

On September 22, 2008 the Federal Election Commission notified Kirk for Congress ("Committee") and Luke F. Praxmarer, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 9, 2009, based upon the information contained in the complaint, and information provided by you on behalf of the Committee, the Commission decided to dismiss the complaint and closed its file in this matter. Accordingly, the Commission closed its file in this matter on April 9, 2009.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the dispositive General Counsel's Report is enclosed for your information.

If you have any questions, please contact Kim Collins, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan

Scheral Counsel

BY:

f S. Jordan Supervisory Attorney

Complaints Examination and Legal Administration

Enclosure General Counsel's Report

1 BEFORE THE FEDERAL ELECTION COMMISSION 2 3 In the Matter of) 4) 5 MUR 6071 CASE CLOSURE UNDER THE 6 KIRK FOR CONGRESS AND **ENFORCEMENT PRIORITY SYSTEM** 7 LUKE PRAXMARER. AS TREASURER 8 9 10 11 **GENERAL COUNSEL'S REPORT** 12 Under the Enforcement Priority System, matters that are low-rated 13 14 ; are forwarded to the Commission with a recommendation for dismissal. The 15 Commission has determined that pursuing low-rated matters compared to other higher rated 16 matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to 17 dismiss these cases. 18 The Office of General Counsel scored MUR 6071 as a low-rated matter. In this case, 19 the complainant, Walter Salganik, alleges that Kirk for Congress and Luke Praxmarer, in his 20 official capacity as treasurer ("the Committee"), violated the disclaimer provisions of the 21 Federal Election Campaign Act, as amended ("Act"). Specifically, the Committee allegedly 22 failed to include a statement indicating that it paid for the costs of an electronic mail 23 communication containing an attached flier advertising a fall voter outreach program. The 24 complainant explains that it is "on information and belief," that the flier was distributed by 25 email, by mail, or by both, to over 500 recipients, thus triggering the disclaimer requirements under 2 U.S.C. § 431(22) and 11 C.F.R. §§ 100.26-27 and 110.11. 26 27 In its response, the Committee asserts that the flier clearly identifies Kirk for 28 Congress as the sponsoring entity (i.e., the entity that paid for the costs of the

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1	communication), because it contains a prominent logo identifying Congressman Mark Kirk	
2	and includes in large type an email address for the Committee, which states	
3	"kirkforcongress.com." The Committee also asserts that, based on its brief review of the	
4	email records of the campaign staff member who sent the email at issue, the flier was not sen	
5	via mass distribution. Instead, the respondent claims that it appears the email was sent to a	
6	limited number of individuals and the complainant failed to provide any evidence to the	
7	contrary.	
8	In recognition of the possibility that the email at issue could have had a limited	
9	distribution pattern and, therefore, may or may not have fallen under the disclaimer	
10	provisions of the Act, and in furtherance of the Commission's priorities and resources,	
11	relative to other matters pending on the Enforcement docket, the Office of General Counsel	
12	believes that the Commission should exercise its prosecutorial discretion and dismiss the	
13	matter. See Heckler v. Chaney, 470 U.S. 821 (1985).	
14	RECOMMENDATION	
15	The Office of General Counsel recommends that the Commission dismiss	
16	MUR 6071, close the file, and approve the appropriate letters.	
17 18 19 20	Thomasenia P. Duncan General Counsel	
21 22 23 24 25	Date BY: Gregory R. Baker Special Counsel Complaints Examination & Legal Administration	

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Supervisory Attorney **Complaints Examination** & Legal Administration

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Attorney